**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1231 of 1981**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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**GSRTC - Appellant(s)**
**Versus**
**VIMLABEN WD/O POPATLAL ISHWARLAL PATEL & 4 - Defendant(s)**

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**Appearance :**
MR MD PANDYA for Appellant(s) : 1,
None for Defendant(s) : 1 - 5.

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 25/07/2006**

**ORAL JUDGMENT**

1. This appeal is directed against the judgement and award dated 17.02.1981 passed by the Motor Accident Claims Tribunal (Main), Mehsana, in Motor Accident Claim Petition No. 164 of 1980 whereby the Tribunal directed the original opponent to pay a sum of Rs. 26,800/- by way of compensation.

2. The short fact of the case are that on 09.05.1980 deceased was travelling in the S.T. Bus

and was going to his home Mitha village from Mehsana. The S.T. Bus was overcrowded and therefore, deceased was standing on the step nearby the entry door of S.T. Bus out of two window panes, one window pane was missing and there was a gap in the door of the S.T. Bus. At that time because of heat and suffocation, there was vomiting sensation and therefore the deceased slightly took his head out of the gap in the door where the window pane was missing. The head of the deceased stuck on the pole and therefore he fell down from the bus and was taken to Civil Hospital, Mehsana but later on succumbed to injures. The legal heirs of the deceased have therefore filed the claim petition claiming Rs. 90,000/- by way of compensation for the death of the deceased. The Tribunal after hearing the parties passed the judgment and award which is under challenge in this appeal.

3. Learned advocate for the appellant has submitted that Tribunal has acted upon wrong principles of law and the amount awarded is extremely high that it amounts to entirely erroneous estimate of the damage. He further submitted that the damages as assessed by

the Tribunal are hopelessly incorrect in as much as the Tribunal has unreasonably taken and or failed to taking into account certain elements into consideration while assessing compensation.

4. As a result of hearing and perusal of the record it is found that the Tribunal has come to the conclusion that electric pole and at the place where the S.T. Bus was lying, the road is about 24' in width. It is not stated in the panchnama as to what is the width of the road at the place where the electric pole is situated but from the evidence of opponent No. 1 at Ex. 36, it is clear that the width of the road is about 22' to 25' at that place and even if any vehicle is proceeding from the opposite side, the S.T. Bus can be taken in such a way that the space of the width of 4' may remain in between the left side portion of the S.T. Bus and the electric pole. The S.T. Bus was to proceed towards Radhanpur cross road. The blood was lying on the door of the S.T. Bus. The blood was also lying on the portion of the door where there was gap in the door. It was also noted in the panchnama that one of the

window panes of the door was not there and there was gap. Therefore it is clear that the accident had taken place as the S.T. Bus was taken on the extreme left hand side of the road just nearby the electric pole. Learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

6. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

**(K.S.JHAVERI, J.)**

Suresh*